UNITED STATES DISTRICT COURT
For the
NORTHERN DISTRICT OF OHIO

United States of America	)	CASE NO: 1:16-CR-00329-2
	)	
	)	
Plaintiff,	)	JUDGE SARA LIOI
	)	Magistrate Judge
vs.	)	William Baughman, Jr.
	)	
SARI ALQSOUS	)	**MOTION TO REVEAL THE**
	)	**GOVERNMENT'S DEAL WITH**
Defendant.	)	**ANY WITNESS**
	)	
	)	
	)	

Now comes the Defendant, Sari Alqsous, and motions this Court to issue an order that compelling the government to reveal to the defense any and all deals, inducements, enticements, and rewards offered to any witness.

Respectfully submitted,

_____s/Joseph . Klammer___
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CERTIFICATE OF SERVICE

I hereby certify that on the 3, of February 2017 a copy of the foregoing was sent via the Clerk of Court's electronic CM/ECF system for filing and transmittal of Notice of Electronic Filing to the following:

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MEMORANDUM

In Giglio v. United States, 405 U.S. 150 (1972), the Court held that a defendant was entitled to a new trial where the government had failed to disclose an alleged promise made to its key witness that he would not be prosecuted if he testified for the prosecution. The court in Giglio, supra, said at page 154:

> "… the Government's case depended almost entirely on Taliento's testimony; without it there could have been no indictment and no evidence to carry the case to the jury. Taliento's credibility as a witness was therefore an important issue on the case, and evidence of any understanding or agreement as to a future agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it."

In Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), he Court considered the Government's failure to correct perjured testimony about a witnesses consideration for testifying. The witnessed denied any such incentive and the perjured testimony was not discovered until after trial. As such, pretrial disclosure of the deal is the only mechanism to prevent such misconduct by a witness.

Referencing Napue in great detail, the Court in United States v. Kaplan, 470 F.2d 100, 103 (7th Cir. 1972) explained:

> In Napue, the principal state witness, in response to a question from the Assistant State's Attorney, stated that he had received no promise of consideration in return for his testimony. The Assistant State's Attorney allowed this statement to come before the jury uncontradicted. After the trial, defendant's counsel discovered that the Assistant State's Attorney had promised that "a recommendation for a reduction of his [the witness'] sentence would be made and, if possible, effectuated." The Court grounded its analysis in the due process clause of the Constitution and interpreted its requirements strictly. It held that where the prosecutor's responsibility to insure a fair trial is concerned there is no difference between false substantive evidence and false impeachment evidence: "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness." 360 U.S. at 269, 79 S.Ct. at 1176. In addition, it found that the consitutional infirmity was not eliminated because other impeachment evidence had been introduced against this witness. 360 U.S. at 270, 79 S.Ct. 1173.

United States v. Kaplan, 470 F.2d 100, 103 (7th Cir. 1972).

Moreover, the failure to disclose an outstanding charge is not excused by good faith of the Government. In United States v. Bonanno, 430 F.2d 1060, 1062 (2d Cir. 1970). It is settled, that "[n]ondisclosure by a government prosecutor of a known indictment by his office against an important government witness cannot be justified by assumptions that the defense already knows of the indictment or by self-serving judgments as to the admissibility of the indictment or its utility to the defense." Bonnano, citing United States v. Acarino, 408 F.2d 512, 516 (2d Cir.), cert. denied, 395 U.S. 961, 89 S.Ct. 2101 (1969). In Bonanno, the Court explained:

> [T]he existence of the outstanding indictment in the same district against a government witness is admissible evidence to show possible motivation of the witness to testify favorably for the government. See United States v. Lester, 248 F.2d 329, 334 (2d Cir. 1957). Even if the indictment were inadmissible at trial, this would not diminish its obvious value to the defense in preparing for trial and in giving it a lead to investigate possible governmental promises to the witness. See United States v. Polisi, 416 F.2d 573, 577-578 (2d Cir. 1969). Moreover, failing to disclose evidence valuable to the defense, even on the good faith belief by the prosecutor that it would be inadmissible at trial, deprives the defense of the opportunity to argue its admissibility and the court of its function of deciding the question.2 Note, The Prosecutor's Constitutional Duty to Reveal Evidence to the Defendant, 74 Yale L.J. 136, 147-48 (1964).

United States v. Bonanno, 430 F.2d 1060, 1062 (2d Cir. 1970).

The failure to disclose even vague promises of consideration is evidence "that the defense might have used to impeach the Government's witnesses by showing bias or interest. Impeachment evidence, however, as well as exculpatory evidence, falls within the Brady rule." United States v. Bagley, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380, 87 L. Ed. 2d 481 (1985), citing, Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). In Bagley, the Government extended the "possibility of a reward had been held out to [the witnesses] if the information they supplied led to "the accomplishment of the objective sought to be obtained ... to the satisfaction of [the Government]." United States v. Bagley, 473 U.S. 667, 683, 105 S. Ct. 3375, 3384, 87 L. Ed. 2d 481 (1985).

That aside, the Court has ample authority to order the release of said deals in advance of trial. The Court may order the Government to make pretrial disclosure of promises, rewards and inducements made to any Government witness, where the Court weighs the risk of intimidation or injury to potential witnesses against need for disclosure to defendants. United States v. Luc Levasseur, 826 F.2d 158 (1st Cir. 1987).

In this case, all of the defendants and many of the cooperating witnesses are dentists. There is simply no good faith reason to argue revealing the terms of any inducements, enticements or offers of immunity will present a risk of harm to a witnesses. Most important, the information will be crucial to the defense. At least one cooperating witness, is engaged in conduct well beyond that alleged to be criminal as against Dr. Alqsous. When the indictment alleges purchase of televisions or a leather handbag, this witness is the third party in the activity. The witness was also a supervisor to Dr. Alqsous. There is an obvious good faith basis for the defense to believe this witnesses testimony is influenced by inducements, enticements and offers of immunity. That information is crucial to designing a defense and the defense investigation.

Based on the foregoing, the defendant motions the Court to issue an order compelling the government to reveal to the defense any and all deals, enticements, inducements or offers of reward extended to any witness.

Respectfully submitted,

_____s/Joseph . Klammer___
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